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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Ibrahim N. Abdulkariem, in
individual and representative
capacity as trustee of the
Abdulkariem Family Trust 2005;
Mahfouza Mahmoud
Abdulkariem, in individual and
representative capacity as trustee of
the Abdulkariem Family Trust 2005;
Guru Brothers, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of:** American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Scott Johnson complains of Ibrahim N. Abdulkariem, in
individual and representative capacity as trustee of the Abdulkariem Family
Trust 2005; Mahfouza Mahmoud Abdulkariem, in individual and
representative capacity as trustee of the Abdulkariem Family Trust 2005;
Guru Brothers, Inc., a California Corporation; and Does 1-10 ("Defendants"),
and alleges as follows:

1 **PARTIES:**

2 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
3 level C-5 quadriplegic. He cannot walk and also has significant manual
4 dexterity impairments. He uses a wheelchair for mobility and has a specially
5 equipped van.

6 2. Defendants Ibrahim N. Abdulkariem and Mahfouza Mahmoud
7 Abdulkariem, in individual and representative capacity as trustee of the
8 Abdulkariem Family Trust 2005, owned the real property located at or about
9 1148 S. Capitol Avenue, San Jose, California, in January 2019.

10 3. Defendants Ibrahim N. Abdulkariem and Mahfouza Mahmoud
11 Abdulkariem, in individual and representative capacity as trustee of the
12 Abdulkariem Family Trust 2005, owned the real property located at or about
13 1148 S. Capitol Avenue, San Jose, California, in February 2019.

14 4. Defendants Ibrahim N. Abdulkariem and Mahfouza Mahmoud
15 Abdulkariem, in individual and representative capacity as trustee of the
16 Abdulkariem Family Trust 2005, owned the real property located at or about
17 1148 S. Capitol Avenue, San Jose, California, in March 2019.

18 5. Defendants Ibrahim N. Abdulkariem and Mahfouza Mahmoud
19 Abdulkariem, in individual and representative capacity as trustee of the
20 Abdulkariem Family Trust 2005, own the real property located at or about
21 1148 S. Capitol Avenue, San Jose, California, currently.

22 6. Defendant Guru Brothers, Inc. owned S & S Market located at or about
23 1148 S. Capitol Avenue, San Jose, California, in January 2019.

24 7. Defendant Guru Brothers, Inc. owned S & S Market located at or about
25 1148 S. Capitol Avenue, San Jose, California, in February 2019.

26 8. Defendant Guru Brothers, Inc. owned S & S Market located at or about
27 1148 S. Capitol Avenue, San Jose, California, in March 2019.

28 9. Defendant Guru Brothers, Inc. owns S & S Market (“Store”) located at

1 or about 1148 S. Capitol Avenue, San Jose, California, currently.

2 10. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein,
7 including Does 1 through 10, inclusive, is responsible in some capacity for the
8 events herein alleged, or is a necessary party for obtaining appropriate relief.
9 Plaintiff will seek leave to amend when the true names, capacities,
10 connections, and responsibilities of the Defendants and Does 1 through 10,
11 inclusive, are ascertained.

12

13 **JURISDICTION & VENUE:**

14 11. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 12. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 13. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25 **FACTUAL ALLEGATIONS:**

26 14. Plaintiff went to the Store in January 2019 (twice), February 2019 and
27 March 2019 with the intention to avail himself of its supplies, motivated in
28 part to determine if the defendants comply with the disability access laws.

1 15. The Store is a facility open to the public, a place of public
2 accommodation, and a business establishment.

3 16. Parking spaces are one of the facilities, privileges, and advantages
4 offered by Defendants to patrons of the Store.

5 17. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
6 to provide accessible parking.

7 18. Currently, the defendants fail to provide accessible parking.

8 19. Paths of travel are one of the facilities, privileges, and advantages
9 offered by Defendants to patrons of the Store.

10 20. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
11 to provide accessible paths of travel.

12 21. Currently, the defendants fail to provide accessible paths of travel.

13 22. Entrance into the Store is another one of the facilities, privileges, and
14 advantages offered by Defendants to patrons of the Store.

15 23. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
16 to provide accessible door hardware.

17 24. Currently, the defendants fail to provide an accessible entrance.

18 25. Plaintiff personally encountered these barriers.

19 26. By failing to provide accessible facilities, the defendants denied the
20 plaintiff full and equal access.

21 27. The failure to provide accessible facilities created difficulty and
22 discomfort for the Plaintiff.

23 28. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 29. The barriers identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 30. Plaintiff will return to the Store to avail himself of its supplies and to
5 determine compliance with the disability access laws once it is represented to
6 him that the Store and its facilities are accessible. Plaintiff is currently deterred
7 from doing so because of his knowledge of the existing barriers and his
8 uncertainty about the existence of yet other barriers on the site. If the barriers
9 are not removed, the plaintiff will face unlawful and discriminatory barriers
10 again.

11 31. Given the obvious and blatant nature of the barriers and violations
12 alleged herein, the plaintiff alleges, on information and belief, that there are
13 other violations and barriers on the site that relate to his disability. Plaintiff will
14 amend the complaint, to provide proper notice regarding the scope of this
15 lawsuit, once he conducts a site inspection. However, please be on notice that
16 the plaintiff seeks to have all barriers related to his disability remedied. See
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
18 encounters one barrier at a site, he can sue to have all barriers that relate to his
19 disability removed regardless of whether he personally encountered them).

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 32. Plaintiff re-pleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 33. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
3 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
5 or procedures, when such modifications are necessary to afford
6 goods, services, facilities, privileges, advantages, or
7 accommodations to individuals with disabilities, unless the
8 accommodation would work a fundamental alteration of those
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 34. When a business provides paths of travel, it must provide accessible
22 paths of travel.

23 35. Here, the failure to provide accessible paths of travel is a violation of the
24 law.

25 36. When a business provides an entrance, it must provide an accessible
26 entrance.

27 37. Here, no such accessible entrance has been provided.

28 38. When a business provides parking for its customers, it must provide

1 accessible parking.

2 39. Here, the failure to provide accessible parking is a violation of the law.

3 40. The Safe Harbor provisions of the 2010 Standards are not applicable
4 here because the conditions challenged in this lawsuit do not comply with the
5 1991 Standards.

6 41. A public accommodation must maintain in operable working condition
7 those features of its facilities and equipment that are required to be readily
8 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 42. Here, the failure to ensure that the accessible facilities were available
10 and ready to be used by the plaintiff is a violation of the law.

11

**12 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
13 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)**

15 43. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code § 51(b).

22 44. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 45. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4 7. Although the plaintiff was markedly frustrated by facing discriminatory
5 barriers, even manifesting itself with minor and fleeting physical symptoms,
6 the plaintiff does not value this very modest physical personal injury greater
7 than the amount of the statutory damages.

8

9

PRAYER:

10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:

12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act, which provides for actual
17 damages and a statutory minimum of \$4,000 for each offense.

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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21 Dated: June 15, 2019

CENTER FOR DISABILITY ACCESS

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By:



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Amanda Seabock, Esq.
Attorney for plaintiff

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